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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 292.

CHARLES A. BAHR, SR., AND GEORGE HAMMAN, Executors of the Estate of Eugene L. Bender, Deceased, *Petitioners,*

v

COMMISSIONER OF INTERNAL REVENUE.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

WILLIAM FULTON TARVER,
MILTON K. ECKERT,
JOHN C. WHITE,
Counsel for Petitioners.

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CHARLES A. BAHR, SR., AND GEORGE HAMMAN, Executors of the Estate of Eugene L. Bender, Deceased, *Petitioners,*

v.

COMMISSIONER OF INTERNAL REVENUE.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

The petitioners pray that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Fifth Circuit (Hutcheson, J., dissenting) entered in the above entitled cause on April 22, 1941, affirming the decision of the United States Board of Tax Appeals, although the Circuit Court opinion finds inadequate the opinion of the Board and substitutes an altogether different rationale of the case.

OPINIONS BELOW.

The opinion of the Board of Tax Appeals (R. 40) is reported in 41 B. T. A. 80. The opinion of the Circuit Court of Appeals (R. 58) is reported in 119 Fed. (2d) 371.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on April 22, 1941 (R. 69). The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED.

1. Whether the gross estate of decedent Eugene L. Bender, the sole heir and legatee of his brother and partner, Frank V. Bender, who died less than nine months before the death of the former, should include the gross estate received from the latter, or should include only a net interest therein for federal estate tax purposes.

2. Whether the plain language of Section 303 (a) (2) of the Revenue Act of 1926, as amended, requires use of the gross estate including the gross estate received from the prior decedent in the equation used to compute the deduction for property previously taxed or whether the lower courts can properly substitute in such equation the net interest in the assets received from the prior decedent.

STATUTES INVOLVED.

Revenue Act of 1926, c. 27, 44 Stat. 70, 72.

Sec. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside the United States—(As amended by Revenue Act of 1934, c. 277, Section 404, 48 Stat. 754)

(a) To the extent of the interest therein of the decedent at the time of his death;

Sec. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a citizen or resident of the United States, by deducting from the value of the gross estate— (As amended by Revenue Act of 1934, c. 277, Section 403 (a), 48 Stat. 753)

(1) Such amounts—

(A) for funeral expenses,

(B) for administration expenses,

(C) for claims against the estate,

(D) for unpaid mortgages upon, or any indebtedness in respect to, property where the value of decedent's interest therein undiminished by such mortgage or indebtedness, is included in the value of the gross estate, and

(E) reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy, or inheritance taxes. The deduction herein allowed in the case of claims against the estate unpaid mortgages, or any indebtedness shall, when founded upon a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth. There shall also be deducted losses incurred during the settlement of estates arising from fires, storms, ship wrecks, or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise, and if at the time of the filing of the return such losses have not been claimed as a deduction for income tax purposes in an income tax return. (As amended by Revenue Act of 1932, c. 209, Section 805, 47 Stat. 280)

(2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1932, or an estate tax imposed under this or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor. Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction allowable under this paragraph shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under paragraphs (1), (3), and (4) of this subdivision as the amount otherwise deductible under this paragraph bears to the value of the decedent's gross estate. Where the property referred to in this paragraph consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction. (As amended by Revenue Act of 1932, c. 209, Section 806 (a), 47 Stat. 281, and Revenue Act of 1934, c. 277, Section 402, 48 Stat. 753.)

STATEMENT.

The stipulation of facts (R. 17-40) was adopted by the Board as its findings of fact; they are substantially as follows:

Frank V. Bender and his brother, Eugene L. Bender, from 1906 until the death of the former composed a common law universal partnership in which each had equal interests; everything owned by either or both of them was partnership property. (R. 18)

Frank V. Bender died testate on March 18, 1934 leaving all his property after the deduction of the community interest of his wife, to his brother, Eugene L. Bender. (R. 17, 19) His will directed that the latter be independent executor without bond or security of any kind and that no court proceedings be had with respect to same except the filing of the will for probate and return of inventory and appraisement as required by law. (R. 37-38)

The will of Frank V. Bender was probated in the Probate Court of Harris County, Texas, on April 10, 1934, the inventory and appraisement was duly filed on April 23, 1934, and the costs of the proceeding were paid by the executor. (R. 17-18) The decree of said court in probating the will specifically recognized the provisions as to the independent executorship and ordered that the estate be dropped from the docket upon the return of the inventory and appraisement and payment of costs. (R. 40)

An estate tax return for the Estate of Frank V. Bender was filed with the Commissioner and inheritance tax return was filed with authorities of the State of Texas, and subsequently petitioners herein paid the federal estate taxes and the inheritance taxes to the State of Texas owing on the Estate of Frank V. Bender. (R. 19, 26)

The value of the gross estate of Frank V. Bender as determined by Commissioner was $913,147.40 with deductions exclusive of specific exemptions in the sum of $150,650.29, of which sum $112,062.50 constituted the share of the Estate of Frank V. Bender in partnership obligations of $448,250.00,

secured notes comprising $402,000 of this item and of which sum $15,762.66 constituted the share of said Estate in taxes owing the State of Texas and subdivisions thereof. (R. 18, 20-21)

Eugene L. Bender died testate on December 1, 1934, appointing petitioners herein as executors and trustees of his estate. (R. 17, 34) At the time of the death of Eugene L. Bender the value of partnership properties which passed under the will of Frank V. Bender to Eugene L. Bender was $880,597.48. (R. 22-23)

In the interim between the deaths of Frank V. Bender and Eugene L. Bender, the share of payments made on partnership mortgages and liens attributable to the Estate of Frank V. Bender was $11,686.78. (R. 25) At the time of the death of Eugene L. Bender secured partnership debts in the amount of $406,000 were still outstanding and taxes on partnership property were owing in the amount of $15,812.03. (R. 25)

The Commissioner determined the gross estate of Eugene L. Bender included only the net value of his interest in the estate of Frank V. Bender, with secured debts applying against the gross estate of the latter received by the former excluded in the computation of the net estate of Eugene L. Bender, and compared the net value of the estate of Frank V. Bender with gross estate of Eugene L. Bender in the ratio by which the deduction for property previously taxed was determined. (R. 12-15)

The Board of Tax Appeals upheld the Commissioner's determination, and the petitioners appealed to the Circuit Court of Appeals which affirmed the result of the Board's decision, but which departed widely from the Board's reasoning. (See dissenting opinion of Hutcheson, J., R. 63, 67)

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred:

1. In holding that the gross estate of Eugene L. Bender included only a net interest in the gross estate of Frank V. Bender with secured debts applying against the gross

estate received through the latter automatically excluded in the computation of the net estate of the former.

2. In failing to hold that the gross estate of Eugene L. Bender included the gross estate of Frank V. Bender with secured debts applicable against the latter proper deductions in the computation of the former's net estate.

3. In holding that the deduction for property previously taxed was properly calculated by a method involving the comparison of the net amount of the Estate of Frank V. Bender with the gross estate of Eugene L. Bender including only above mentioned net amount in the formula by which said deduction is derived.

4. In failing to hold that the deduction for property previously taxed should be determined by comparing the gross estate of Frank V. Bender with the gross estate of Eugene L. Bender, including the gross estate of the former, in the formula by which said deduction is calculated and that the statute demands such an application of this formula.

5. In affirming the decision of the Board of Tax Appeals.

6. In failing to reverse the order of the Board and remand the cause for redetermination.

REASONS FOR GRANTING THE WRIT.

1. The methods of construction of a tax statute voiced in the opinion of the Circuit Court of Appeals are in conflict with applicable decisions of the Supreme Court.

a. The Circuit Court of Appeals construed Section 303(a)(2) of the Revenue Act of 1926, as amended, as permitting the deduction of secured debts from the gross asset value of inherited property prior to the inclusion of the latter in the gross estate of the decedent, and the comparison of the net inherited interest with the gross estate thus limited in the statutory formula for deriving the measure of the deduction for property previously taxed. In its inter-

pretation of this deduction from the value of a gross estate for federal estate tax purposes, the admitted objective of which is to prevent a double estate or gift tax on the same property within five years, the Circuit Court reads into the language of Section 303(a)(2), as amended, an adaption to "particular pieces of property specifically given or inherited". The plain words of the statute indicate no such limited scope. Furthermore, from that narrow viewpoint, the Circuit Court opinion reads into the amended section above-mentioned a limitation "which Congress has by amending it, taken out of it" (See opinion of Hutcheson, J., dissenting, R. 67), and forces a net interest theory upon an equation clearly demanding the comparison of gross interests.

Such a restricted view of the statute is in no way justified either by the legislative history of the provision, the regulations of the Treasury Department, or the construction of other courts. The refusal of the Circuit Court to follow the plain and direct words of the statute is in pointed contradistinction to the thought of the Supreme Court expressed in *Crooks* v. *Harrelson*, 282 U. S. 55, 61, on the subject of statutory interpretation:

> "Finally, the fact must not be overlooked that we are here concerned with a taxing act, with regard to which the general rule requiring adherence to the letter applies with peculiar strictness."

The dissenting Judge below called attention to this violation of the rules of statutory construction in the opinion of the Circuit Court which "does as complete violence to the terms of the statute as that the Board puts forward" and expressed the rule approved by the Supreme Court as follows (R. 67):

> "Where the words of a taxing act have a sensible meaning they are controlling. They must be followed rather than a supposed intent not expressed in them. 'Courts and administrative agencies are bound to enforce the plain words of a statute, although there may

> be reason to think in view of the general legislative purpose that some other provision would have met with favor if the legislature had called it to mind.' *Commissioner of Internal Revenue* v. *Windrow*, 89 Fed. (2d) 69."

No more recent expression of the opinion of the Supreme Court on the subject of statutory interpretation from which the Circuit Court departs could be found than in *Helvering* v. *Hammel*, 85 Law Ed. Adv. Op. 295, No. 49, October Term, 1940, decided January 6, 1941, wherein it is declared:

> "True, courts in the interpretation of a statute have some scope for adopting a restricted rather than a literal or usual meaning of its words where acceptance of that meaning would lead to absurd results, *United States* v. *Katz*, 271 U. S. 354, 362, 70 L. ed. 986, 990, 46 S. Ct. 513, or would thwart the obvious purpose of the statute, *Haggar Co.* v. *Helvering*, 308 U. S. 389, 84 L. ed. 340, 60 S. Ct. 337. But courts are not free to reject that meaning where no such consequences follow and where, as here, it appears to be consonant with the purposes of the Act as declared by Congress and plainly disclosed by its structure."

Clearly the Circuit Court was not "free to reject" the literal meaning of Section 303(a)(2), as amended, in this case and in doing so prepared a conflicting opinion with the thought of the Supreme Court.

Moreover, the deduction for property previously taxed was established as a matter of public policy to prevent double taxation. The extent and scope of a deduction of this type is not to be infringed upon by a constricting interpretation. So the Supreme Court has specified in the following language from the opinion in *Helvering* v. *Bliss*, 293 U. S. 144, 150:

> "If the meaning of the Act were doubtful, we should still reach the same conclusion. The exemption of income devoted to charity and the reduction of the rate of tax on capital gains were liberalizations of the law in the taxpayer's favor, were begotten from motives of public policy, and are not to be narrowly construed."

The action of the Circuit Court in confining the deduction for property previously taxed to limited bounds is contrary to the accepted rule of the Supreme Court. It must not be overlooked that while Section 303(a)(2), as amended, authorizes a deduction from a gross estate under certain circumstances, no one has contested or could contest the right of the estate of the decedent herein to the deduction. The controversy relates solely to the quantum of the deduction and on that simple and mathematical point there is all the more reason for a literal construction of the statute in accordance with the decisions of the Supreme Court.

b. The refusal of the Circuit Court of Appeals to concede appropriate effect to a Texas law of property affecting the quantum of a gross estate, Art. 3314, Revised Civil Statutes of Texas (1925), the pertinent portion of which is set out in the Appendix, *infra*, is in direct conflict with the views of this court expressed in *Poe* v. *Seaborn*, 282 U. S. 101; *Crooks* v. *Harrelson*, 282 U. S. 55; and *Blair* v. *Commissioner*, 300 U. S. 5, and other opinions. In those cases, state rules of property were observed in the administration of federal taxing acts, and no less effect should be accorded the above-mentioned Texas statute in its declaration that legal title to inherited property vests in the heir as of the date of death of the testator.

In estate tax matters, the local rules of property are peculiar and singularly controlling.[1] Paying its respects to the "myth"[2] of uniformity in the administration of federal taxes, the Circuit Court accepts the case of *Burnet* v. *Harmel*, 287 U. S. 103, as blanketing out the effect of local laws "unless the statute refers to them as a standard". In the

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[1] "The law of each state still, it is true, determines the quantum or quality of the decedent's interest in the property involved; * * *" Randolph E. Paul, Selected Studies in Federal Taxation, The Effect of Federal Taxation on Local Rules of Property, p. 21 (Second Series, Callaghan and Company, Chicago, 1938.)

[2] Ibid., p. 5.

first place, the *Burnet* case involved a problem[3] wholly different from that in the instant case where the extent of the decedent's property interest in the evaluation of his gross estate is in issue. Secondly, the opinion in the *Burnet* case does not rule out the effect of state statutes except where express reference is made to them as a standard since it also declares the operation of the federal taxing act may be controlled by the local law in cases of "necessary implication". Many parts of the federal estate tax law are expressly dependent upon state laws, as, for instance, items of deduction from gross estates under Section 303(a)(1). Moreover, the character of the interest of the decedent in property is so peculiarly within the province of the local rules of property that Section 302(a) in defining the value of a gross estate simply provides for the inclusion of the value of all property "To the extent of the interest of the decedent at the time of his death". No standard is specified for the determination of these "interests", which by necessary implication must be determined by state law. In *Morgan* v. *Commissioner*, 309 U. S. 78, 80, it is stated:

> "State law creates legal interests and rights. The federal revenue acts designate what interests or rights, so created shall be taxed".

Consequently, the Circuit Court slipped into a conflict with applicable decisions of this Court when it discarded the complete interest which the present decedent had under Texas law in the prior estate and supplied an artificial net interest not specified or demanded by the federal taxing act.

2. There is involved an important question of the construction of a federal statute which has not been before this Court and should be settled by it. The deduction for "property previously taxed" is a significant part of the federal

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[3] "The question at isue, in other words, was not the nature of the property interest possessed by the parties, but simply whether the transaction, though characterized as a sale by state law, was the sort of transaction which Congress had intended to tax as a capital gain." Ibid., p. 33, n. 73.

estate tax law, and in view of the public policy behind its enactment is fully deserving of the consideration of the Supreme Court. Moreover, the amendment of Section 303 (a) (2) of the Revenue Act of 1926 by Section 806 (a) of the Revenue Act of 1932 raises an exceedingly delicate question of statutory interpretation (See dissenting opinion, below, R. 67), yet because of the relative infrequency of cases like this in the courts, a conflict of opinions below in the near future is improbable. The very fact that the Court below was divided, with a strong dissenting opinion, contributes to the reasons why the questions presented should be handled and settled by this Court to avoid administrative confusion and to permit taxpayers to know the proper interpretation of the law.

CONCLUSION.

It is, therefore, respectfully submitted that this petition for writ of certiorari should be granted.

William Fulton Tarver,
Milton K. Eckert,
John C. White,
Counsel for Petitioners.

APPENDIX.

REVISED STATUTES OF TEXAS, 1925:

Article 3314. Transfer of Estate at Death.

When a person dies, leaving a lawful will, all of his estate devised or bequeathed by such will shall vest immediately in the devisees or legatees; and all the estate of such person, not devised or bequeathed, shall vest immediately in his heirs at law; subject however to the payment of the debts of the testator or intestate, except such as may be exempted by law; and, whenever a person dies intestate, all of his estate shall vest immediately in his heirs at law, but with the exceptions aforesaid shall still be liable and subject in their hands to the payment of the debts of the intestate; but upon the issuance of letters testamentary or of administration upon any such estate, the executor or administrator shall have the right to the possession of the estate as it existed at the death of the testator or intestate, with the exceptions aforesaid; and he shall recover possession of and hold such estate in trust to be disposed of in accordance with law. (Vernon's Texas Civil Statutes, Vol. 9, Title 54, Art 3314, p. 384)

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 292

CHARLES A. BAHR, SR., AND GEORGE HAMMAN, EXECUTORS OF THE ESTATE OF EUGENE L. BENDER, DECEASED, PETITIONERS

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 41–47) is reported at 41 B. T. A. 80. The opinions of the Circuit Court of Appeals for the Fifth Circuit (R. 58–69) are reported at 119 F. (2d) 371.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Fifth Circuit was entered on April 22, 1941 (R. 69). The petition for a writ of

certiorari was filed on July 21, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the gross value of a prior estate or its net value is to be used in determining the deduction allowable to a decedent's estate under Section 303 (a) (2) of the Revenue Act of 1926, as amended, for property previously taxed.

2. Whether the taxes and debts of a prior estate are allowable as deductions under Section 303 (a) (2) of the Revenue Act of 1926, as amended, from a decedent's gross estate.

STATUTE AND REGULATIONS INVOLVED

The pertinent portions of the applicable statute and regulations are set forth in the Appendix, *infra,* pp. 8–10.

STATEMENT

The facts as found by the Board of Tax Appeals (R. 41–47) may be summarized as follows:

The prior decedent, Frank Bender, died testate on March 18, 1934 (R. 41). His brother, Eugene Bender, the decedent, died on December 1, 1934.[1] All of the estate of the prior decedent, after ex-

[1] Frank's estate had not been administered and no distribution had been made at the time of decedent's death.

cluding the community interest of his wife, was left to the decedent. The two brothers were partners, each owning a one-half interest in the partnership,

The Commissioner determined the gross value of the estate of the prior decedent to be $913,147.40. In determining the amount of the previously taxed property passing from the prior estate to the estate of the decedent, the Commissioner deducted from the gross figure of the prior estate allowable deductions of $150,650.29, and estate and inheritance taxes of $108,992.81. The sum of $649,706.88 representing the computed net value of the prior estate was included in the gross estate of decedent, and a deduction in the same amount was allowed as representing property identified as having been previously taxed in the estate of the prior decedent[2] (R. 42). No deduction was allowed the estate of this decedent for estate and inheritance taxes paid upon the prior estate. One-fourth of the partnership debts was allowed as a deduction in the prior estate, and one-fourth was attributed to the wife of the prior decedent; the

[2] The application of the formula provided in Section 303 (a) (2), as amended, resulted in the allowance of a deduction of $488,437.47 in computing the 1926 tax, and of $503,337.05 in computing the 1932 tax (R. 14). The difference is due to the fact that the specific exemption which is a factor in the computation is lower under the 1932 Act.

remaining one-half of such debts was allowed as a deduction in the present estate (R. 42–43).

The case was tried on a stipulation of facts and the determinations of the Commissioner were affirmed by the Board (R. 47). The decision of the Board of Tax Appeals was affirmed by the Circuit Court of Appeals for the Fifth Circuit (R. 63).

ARGUMENT

Section 303 (a) (2) of the Revenue Act of 1926, as amended by Section 806 (a) of the Revenue Act of 1932, provides that in determining the net estate there shall be allowed as a deduction the value of property upon which an estate tax has been previously paid within the past five years subject to a reduction based on the ratio of certain other deductions to the decedent's gross estate. The purpose of the provision was to prevent taxing the same property twice within a five-year period. H. Rep. No. 767, 65th Cong., 2nd Sess., p. 22 (1939–1 Cum. Bull. (Part 2) 102). To be entitled to the deduction it must be shown that such property can be identified as having been received by the decedent, and further that an estate tax has been finally determined and paid by the prior decedent.

The petitioners contend, however, that in determining the allowable deduction for property previously taxed the basic figure is not the $649,706.88 determined by the Commissioner, but

$913,147.40, the gross value of the estate of the prior decedent. The court below held that the Commissioner was correct in first deducting the taxes and expenses of the prior estate and allowing as a deduction for property previously taxed only the net amount of the estate less the reduction required by the statutory formula.

The construction placed on the statute by the court below is correct and reasonable. Analysis of the statute itself shows that any other interpretation as applied to the instant situation would fail to fulfill the requirements of the statute (a) that the property be identified as having been received by the decedent, and (b) that the property must have been the subject of a previous tax.[3] *Rodenbough* v. *United States,* 25 F. (2d) 13 (C. C. A. 3). The prior decedent's taxes were paid only on the net value of his estate, and only

[3] The dissenting opinion below is in error in its sole focus on the last clauses of Section 303 (a) (2) (Appendix, *infra,* pp. 8–9) at the expense of the first and more crucial clauses. These last clauses provide a formula by which the deduction for previously taxed property allowable under the statute is reduced because of the existence of deductions under other sections of the statute. Its purpose is to prevent an estate which has large deductions for debts, expenses, and charitable bequests, as well as for property previously taxed, from escaping liability altogether. See H. Rep. No. 708, 72nd Cong., 1sf Sess., p. 48 (1939–1 Cum. Bull. (Part 2) 491). The gross estate referred to therein is that of the present estate. The formula in no way authorizes the use of gross figures of the prior estate in determining the amount of the deduction allowable in the present estate.

the net value was received by the present decedent. Compare *Parrott* v. *Commissioner,* 30 F. (2d) 792 (C. C. A. 9), certiorari denied 279 U. S. 870. To allow the items which have already been deducted from the prior decedent's estate to be deducted also from decedent's estate would be to permit a double deduction. Wherever possible, double deductions should be avoided. *Ilfeld Co.* v. *Hernandez,* 292 U. S. 62, 68. The circumstance that the prior decedent's estate had not been closed by decedent as executor and the partnership had not been fully liquidated when decedent died does not alter the situation.

Petitioners claim that under Texas law all of the prior decedent's property as well as his debts passed to the decedent. The Texas law cannot thus vary the usual method of determining the net estate for the purposes of measuring the federal estate tax due. It is well settled that whenever possible federal revenue laws are uniformly applied. In *United States* v. *Pelzer,* decided March 3, 1941, not officially reported, this Court said:

> But as we have often had occasion to point out, the revenue laws are to be construed in the light of their general purpose to establish a nation-wide scheme of taxation uniform in its application. Hence their provisions are not to be taken as subject to state control or limitation unless the language or necessary implication of the section involved makes its application dependent on state law. * * *

Nothing in the present statute indicates an intention that state laws should control in the method used for determination of the amount of a net estate for the purposes of federal taxation.

The instant case does not present a question of general importance but turns on its own particular facts. The circumstance that the decedent herein was his brother's executor as well as sole devisee and had not administered the prior estate has caused some confusion, but does not affect the result. No conflict of decisions is presented by the petition.

CONCLUSION

The decision below is correct and there is no conflict. The petition should therefore be denied.

Respectfully submitted.

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Assistant Attorney General.
J. LOUIS MONARCH,
JOHN J. PRINGLE, JR.,
Special Assistants to the Attorney General.

AUGUST 1941.

APPENDIX

Revenue Act of 1926, c. 27, 44 Stat. 9, as amended by Section 806 (a) of the Revenue Act of 1932, c. 209, 47 Stat. 169, and as amended by Section 402 of the Revenue Act of 1934, c. 277, 48 Stat. 680:

> SEC. 303. For the purpose of the tax the value of the net estate shall be determined—
>
> (a) In the case of a citizen or resident of the United States, by deducting from the value of the gross estate—
>
> * * * * *
>
> (2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1932, or an estate tax imposed under this or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the

decedent's gross estate, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor. Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction allowable under this paragraph shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under paragraphs (1), (3), and (4) of this subdivision as the amount otherwise deductible under this paragraph bears to the value of the decedent's gross estate. Where the property referred to in this paragraph consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction. * * *
(U. S. C., Title 26, Sec. 412.)

Treasury Regulations 80 (1934 Ed.):

ART. 41. *Deduction of the value of transfers previously taxed.*—Should there be included in the decedent's gross estate the value of property received by him by gift from any person within five years prior to his death, or received by gift, bequest, devise, or inheritance from any person who died within five years prior to his death, or the value of property acquired in exchange for property so received, the statute authorizes a deduction in behalf thereof, subject to the following conditions and limitations, namely:

(*a*) *Conditions.*—

(1) The property respecting which the deduction is sought must have been received by

the decedent as a gift within five years of the date of his death, or received by him by gift, bequest, devise, or inheritance from a prior decedent who died within five years of the date of the decedent's death.

(2) The property must be identified either as the same which the decedent so received or acquired in exchange therefor.

(3) The property must have formed a part of the gross estate, situated in the United States, of such prior decedent, or have been included in the total amount of gifts of a donor.

(4) An estate tax by or on behalf of the estate of such prior decedent, or a gift tax by or on behalf of the donor, must have actually been paid (the mere filing of a return for such estate or donor not being sufficient).

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